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PUBLIC SERVICE  
COMMISSION

November 7, 2007

Ms. Beth O'Donnell  
Executive Director  
Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, KY 40602

Re: SouthEast Telephone, Inc.'s Motion to Compel BellSouth  
Telecommunications, Inc.'s Compliance With Commission Order in Case  
No. 2005-00519 (BellSouth Telecommunications, Inc.'s Notice of Intent to  
Disconnect SouthEast Telephone, Inc. for Non-Payment) and Case No.  
2005-00533, (SouthEast Telephone, Inc., v. BellSouth  
Telecommunications, Inc.)  
PSC 2007-00071

Dear Ms. O'Donnell:

Enclosed for filing in this case is BellSouth Telecommunications, Inc., d/b/a AT&T  
Kentucky's Motion to Dismiss and Withdrawal of Cross Motion.

The original and ten (10) copies of the filing are enclosed for filing in this case.

Sincerely,

Mary K. Keyer  
General Counsel/Kentucky

cc: Parties of Record

Enclosures

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

SOUTHEAST TELEPHONE, INC.'S, )  
MOTION TO COMPEL BELLSOUTH )  
TELECOMMUNICATIONS, INC.'S, )  
COMPLIANCE WITH COMMISSION )  
ORDER IN CASE NO. 2005-00519 )  
(BELLSOUTH TELECOMMUNICATIONS, INC.'S, )  
NOTICE OF INTENT TO DISCONNECT SOUTHEAST )  
TELEPHONE, INC., FOR NON-PAYMENT) AND )  
CASE NO. 2005-00533, (SOUTHEAST TELEPHONE, INC., )  
V. BELLSOUTH TELECOMMUNICATONS, INC.) )

CASE NO.  
2007-00071

**BELLSOUTH TELECOMMUNICATIONS, INC., D/B/A AT&T KENTUCKY'S,  
MOTION TO DISMISS AND WITHDRAWAL OF CROSS MOTION**

BellSouth Telecommunications, Inc., d/b/a AT&T Kentucky ("AT&T Kentucky"), by counsel, hereby moves the Kentucky Public Service Commission ("Commission") to dismiss with prejudice the pending Motion to Compel filed by SouthEast Telephone, Inc. ("SouthEast Telephone"). SouthEast Telephone's Motion sought a Commission Order requiring AT&T Kentucky to comply with a Commission Order issued in two related dockets (Case Nos. 2005-00519 and 2005-00533). AT&T Kentucky filed a cross motion to compel SouthEast Telephone to at least pay the rate (TELRIC plus \$1) ordered by the Commission in its August 16, 2006, Order.<sup>1</sup> As explained herein, because the Commission Order with which SouthEast Telephone sought to compel compliance has

<sup>1</sup> Incredibly, SouthEast Telephone refused to pay the Commission-ordered rate (TELRIC plus \$1) for resale services ordered from AT&T Kentucky. Specifically, SouthEast Telephone "short paid" its bills in a confusing attempt to recoup alleged lost revenue. That is, SouthEast Telephone refused to pay AT&T Kentucky the appropriate charges for the services ordered by SouthEast Telephone, but instead withheld payments in an amount that supposedly represented lost revenue that SouthEast Telephone claimed it would have been paid from third parties had it been able to continue ordering UNE-P services. The amounts that SouthEast Telephone improperly and illegally withheld from paying AT&T Kentucky is part of the amount due AT&T Kentucky and which AT&T Kentucky will seek to recover in Case Nos. 2005-00519 and 2005-00533.

been declared unlawful by a reviewing federal court, SouthEast Telephone's Motion to Compel should be dismissed as moot and contrary to controlling federal law.

Accordingly, upon the dismissal of SouthEast Telephone's Motion to Compel, AT&T Kentucky agrees to withdraw its Cross-Motion to Compel as also being moot.<sup>2</sup>

On January 4, 2007, SouthEast Telephone, Inc. filed a Motion to Compel AT&T Kentucky to comply with the Commission's August 16, 2006, Order in Case No. 2005-00519, *BellSouth Telecommunications, Inc.'s, Notice of Intent to Disconnect SouthEast Telephone, Inc., for Non-Payment*, and Case No. 2005-00533, *SouthEast Telephone Inc., v. BellSouth Telecommunications, Inc.* SouthEast Telephone's motion asserted that AT&T Kentucky had failed to comply with the Commission's Order requiring access to switching and transport elements pursuant to 47 U.S.C. § 271 of the federal Telecommunications Act of 1996 ("the Act") commingled with unbundled loops provided pursuant to 47 U.S.C. § 251 of the Act. On January 22, 2007, AT&T Kentucky filed its Response to SouthEast Telephone's Motion to Compel and a Cross-Motion to Compel SouthEast Telephone to pay the amounts ordered by the Commission.

On February 28, 2007, the Commission issued its order in this proceeding holding the matter in abeyance pending the outcome of the litigation of the issues in Case No. 3:06-CV-00065-KKC in the United States District Court, Eastern District of Kentucky, *BellSouth Telecommunications, Inc. v. Kentucky Public Service Commission, et al.* The Commission in its abeyance order noted that the order for which both Parties were seeking to compel compliance from the other is the subject of litigation in federal

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<sup>2</sup> AT&T Kentucky's withdrawal should not be construed as a waiver of AT&T Kentucky's rights to the amounts improperly withheld by SouthEast Telephone. As previously noted, AT&T Kentucky will include these amounts in its damages filing in KPSC Case Nos. 2005-00519 and 2005-00533 with the Commission in accordance with the federal court's remand order. These amounts are damages that are due AT&T Kentucky from SouthEast as a result of the Commission's August 16, 2006, Order.

court. Because of that the Commission held this proceeding in abeyance pending the outcome of the litigation.

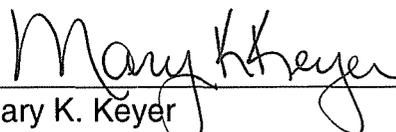
On September 18, 2007, the U.S. District Court issued its Opinion and Order granting AT&T Kentucky's Motion for Summary Judgment. Among other things, the District Court found that since the Commission "had no authority to act pursuant to § 271, the PSC's [August 16, 2006] Order is hereby declared unlawful and enjoined from enforcement." *Id.* at 21

Because SouthEast Telephone sought to compel compliance with an Order that has been declared unlawful, it naturally and logically follows that SouthEast Telephone's Motion to Compel must be dismissed as moot and contrary to controlling law.

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Consistent with that and upon the dismissal of SouthEast Telephone's motion, AT&T Kentucky agrees to withdraw its Cross-Motion to Compel.

Respectfully submitted,



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COUNSEL FOR BELLSOUTH  
TELECOMMUNICATIONS, INC.  
D/B/A AT&T KENTUCKY

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on the individuals on the attached Service List by mailing a copy thereof, this 7th day of November, 2007.

  
Mary K. Keyer

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**SERVICE LIST – PSC 2007-00071**

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